

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEONARD COUSINO,

Plaintiff,

v.

CALHOUN COUNTY, et al.,

Defendants.

Case No. 1:23-cv-1174

HON. JANET T. NEFF

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OPINION AND ORDER

This is a civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed a Motion for Default (ECF No. 9) and a Motion for Default Judgment (ECF No. 11). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that both motions be denied because Plaintiff has not accomplished service. The matter is presently before the Court on Plaintiff's objections to the R&R. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the R&R to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff's objections are confusing and incoherent. His main argument appears to be that Defendants waived their personal jurisdiction defense by having their attorney file an appearance. The Sixth Circuit, however, has held that "[f]iling notice of appearance does not, on its own, cause [D]efendant to waive her personal jurisdiction defense." *Blessing v. Chandrasekhar*, 988 F.3d 889, 864 (6th Cir. 2021). Furthermore, the record in this case does not establish "that

[Defendants'] litigation conduct gave the [P]laintiff a 'reasonable expectation' that the [D]efendant[s] intended to 'defend the suit on the merits.'" *See id.* at 899.

Plaintiff's remaining arguments fail to demonstrate any factual or legal error in the Magistrate Judge's analysis or conclusion. The Magistrate Judge correctly determined that Plaintiff failed to accomplish service on the individual Defendants because the mail was not sent "delivery restricted" and none of the individual Defendants personally accepted delivery (ECF No. 13 at PageID.104). In addition, the Magistrate Judge correctly determined that Plaintiff had not shown that he successfully accomplished service on Calhoun County (*id.* at PageID.104-105). Because Plaintiff has not demonstrated compliance with any of the methods of service, his motions for default and default judgment must be denied.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 14) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 13) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion for Default (ECF No. 9) and Motion for Default Judgment (ECF No. 11) are DENIED.

IT IS FURTHER ORDERED that Plaintiff's Notice of Request for Summary Judgment (ECF No. 12) is DISMISSED WITHOUT PREJUDICE.

Dated: August 7, 2024

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge